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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,828	11/29/2000	Paul J. Rucinski	RUC-100DFDXC2	8718
23557 75	590 09/17/2003			
SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION 2421 N.W. 41ST STREET			EXAMINER	
			LEWIS, KIM M	
SUITE A-1 GAINESVILLE, FL 326066669			ART UNIT	PAPER NUMBER
	,		3761	1.1
			DATE MAILED: 09/17/2003	14

Please find below and/or attached an Office communication concerning this application or proceeding.

		ΛX
	Application No.	Applicant(s)
	09/725,828	RUCINSKI, PAUL J.
Office Action Summary	Examiner	Art Unit
	Kim M. Lewis	3761
The MAILING DATE of this communicate Period for Reply	ation appears on the cover sheet w	ith the correspondence address
A SHORTENED STATUTORY PERIOD FOR THE MAILING DATE OF THIS COMMUNIC. - Extensions of time may be available under the provisions of after SIX (6) MONTHS from the mailing date of this commun. - If the period for reply specified above is less than thirty (30) of the period for reply is specified above, the maximum statur. - Failure to reply within the set or extended period for reply with any reply received by the Office later than three months after earned patent term adjustment. See 37 CFR 1.704(b). Status	ATION. 37 CFR 1.136(a). In no event, however, may a rication. days, a reply within the statutory minimum of thir tory period will apply and will expire SIX (6) MON I, by statute, cause the application to become AE	eply be timely filed by (30) days will be considered timely. ITHS from the mailing date of this communication. SANDONED (35 U.S.C. § 133).
1) Responsive to communication(s) filed	d on <u>21 May 2003</u> .	
2a) This action is FINAL . 2b	n)⊠ This action is non-final.	
3) Since this application is in condition f closed in accordance with the practic Disposition of Claims		
4) Claim(s) 1-34 is/are pending in the ap	oplication.	
4a) Of the above claim(s) 24-34 is/are	withdrawn from consideration.	
5) Claim(s) is/are allowed.		
6)⊠ Claim(s) <u>1-3 and 5-17</u> is/are rejected.		
7)⊠ Claim(s) <u>4 and 18-23</u> is/are objected t	0.	
8) Claim(s) are subject to restriction	on and/or election requirement.	
Application Papers	•	:
9) The specification is objected to by the		
10) The drawing(s) filed on is/are: a		
Applicant may not request that any object		
11)⊠ The proposed drawing correction filed		d b) disapproved by the Examiner.
If approved, corrected drawings are requ		
12)☐ The oath or declaration is objected to b	by the Examiner.	
Priority under 35 U.S.C. §§ 119 and 120		
13) Acknowledgment is made of a claim for	or foreign priority under 35 U.S.C.	§ 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:		•
1. Certified copies of the priority d		·
•	ocuments have been received in A	
 Copies of the certified copies of application from the Interna See the attached detailed Office action 	f the priority documents have been tional Bureau (PCT Rule 17.2(a)). for a list of the certified copies not	•
14) ☐ Acknowledgment is made of a claim for	·	•
a) The translation of the foreign lang		
15)⊠ Acknowledgment is made of a claim fo		
Attachment(s)	A\ ☐ Interview	Summary (PTO-413) Paper No(s)
 Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-3) Information Disclosure Statement(s) (PTO-1449) 	O-948) 5) Notice of	Informal Patent Application (PTO-152)
J.S. Patent and Trademark Office		

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DETAILED ACTION

Election/Restrictions

1. Applicant's election of the invention of claims 1-23 in Paper No. 13 is acknowledged. Claims 24-34 are hereby withdrawn.

Information Disclosure Statement

2. The information disclosure statements filed 6/18/01, 6/6/02 and 7/15/02 have been received and made of record in the application file wrapper. Note the acknowledged PTO-1449 forms enclosed herewith.

Drawings

3. The corrected or substitute drawings were received on 6/18/01. These drawings are approved by the examiner.

Response to Amendment

4. The preliminary amendment filed on 3/1/02 has been received and made of record in the application file wrapper. The specification has been amended as requested.

Specification

5. The disclosure is objected to because of the following informalities: the examiner cannot locate Appendix A as stated on page 15, line 4.

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6. Additionally, in order to minimize the necessity in the future of converting dimensions given in the English system of measurements to the metric system of measurements when using printed patents as research and prior art search documents, all patent applicants should use the metric (S. I.) units followed by the equivalent English units when describing their invention in the specifications of patent applications. As such the units of the diameter of the ports must be changed to include the metric system of units.

Appropriate correction is required.

Claim Objections

7. Claim 8 is objected to because of the following informalities:

Claim 8, line 2, "devise" should read --device--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

- 8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 9. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.

Resolving the level of ordinary skill in the pertinent art.

- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- 10. Claim 1-3 and 5-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,583,602 ("Gruber") in view of U.S. Patent No. 5,509,187 ("Sperry et al.").

As regards claim 1, Gruber discloses a dripless fluid spray apparatus comprising a reservoir housing (body 2) and a removable discharge means (3), which discharges a pressurized stream of fluid.

Gruber fails to teach the fluid is a wound irrigation solution. However, Sperry et al. teach a reservoir housing having wound irrigation solution for irrigating a wound. In view of Sperry et al., it would have been obvious to one having ordinary skill in the art to modify Gruber by adding a wound irrigation solution to the reservoir of Gruber in order provide dripless dispensing of the wound irrigation fluid to a user.

As regards claim 2, the portion of discharge means (3) that includes apertures (7) is a flat disc.

As regards claim 3, the ports of the instant claim read on apertures (7).

As regards claim 5, as can be seen from Fig. 1, Gruber discloses at least four ports (apertures).

As regards claim 6, Gruber is silent as to the diameter of the apertures and therefore fails to teach that the diameter of the apertures is above 0.04 inches.

However, the examiner contends that it has been held that a change in size of a prior

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art device is a design consideration within the level of ordinary skill in the art. *In re rose*, 220 F.2d 459 669, 149 USPQ 47 (CCPA 1966).

Additionally, one having ordinary skill in the art would have found it within the level of ordinary skill in the art to adjust the diameter of the apertures depending upon the desired droplet size as well as the desired force of the fluid.

As regards claim 7, the reservoir housing of Gruber has a threaded neck (col. 1, lines 69-71) and an inherent opening, which allows for fluid flow from the housing to the dispensing means.

As regards claim 8, note the rejection of claim 7 above. Additionally, it is inherent that the flat disc is positioned over the opening.

As regards claim 9, note marked-up Fig. 1 of Gruber, which shows an end cap shown in Fig. 1.

As regard claim 10, cap (4) of Gruber reads on the protective membrane of the instant claim.

As regards claim 11, the portion of the dispensing means connecting the cap to the end cap is considered the pull tab in that it can be pulled to release the cap and uncover the apertures.

As regards claim 15, the modified device of Grubber fails to teach the disclosed adjustable discharge means. However, the examiner contends that the rate of discharge of the irrigation fluid can be adjusted by adjusting the amount of force used to pressurize the fluid.

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11. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruber in view of Sperry et al. as applied to claim1 above, and further in view of U.S. Patent No. 5,133,701 ("Han").

As regards claims 12 and 13, both Gruber and Sperry et al. fail to teach a splashguard. However, Han teaches it is conventional to provide wound irrigation devices with hemispherical splashguards in order to prevent the back splashed irrigated fluid from contacting the physician.

In view of Han, it would have been obvious to provide the modified device of Gruber with a hemispherical splashguard in order to prevent the back splashed fluid from contacting the user.

As regards claim 14, the modified device of Grubber fails to include a splashguard having a removable protective cap. However, the examiner contends that since it is known to provide protective caps on components for dispensing fluids (e.g., the discharge means), one having ordinary skill in the art would have been motivated to also provide protective caps on any other components of the dispensing device that fluid may contact and then subsequently contact the wound.

Allowable Subject Matter .

12. Claims 4 and 16-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays and Tuesdays from 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.

∬Rim∖M. Lewis Primary Examiner Art Unit 3761

kml August 11, 2003